

STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE MICHIGAN COURT OF APPEALS
AND THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MICHIGAN TOOLING ASSOCIATION
WORKERS' COMPENSATION FUND,
in its own right and as Subrogee of
DISTEL TOOL & MACHINE CO.,

Plaintiff-Appellee,
-vs-

SC Case No: 127834
COA Case No: 249013
Lower Court No: 01-030684-CK

FARMINGTON INSURANCE AGENCY, L.L.C.,

Defendant-Appellant,

MACHINERY MAINTENANCE
SPECIALISTS, INC.,

Defendant,
and

FARMINGTON INSURANCE AGENCY, L.L.C.,

Third Party Plaintiff-Appellant,
-vs-

EMPLOYERS INSURANCE OF WAUSAU,
a Mutual Company, and WAUSAU
INSURANCE COMPANIES,

Third Party Defendants-Appellees.

SUPPLEMENTAL AUTHORITIES ON BEHALF OF THE
DEFENDANT-APPELLANT FARMINGTON INSURANCE AGENCY, L.L.C.,
SUBMITTED PURSUANT TO THE COURT'S ORDER OF OCTOBER 7, 2005

PROOF OF SERVICE

Submitted by:
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127834

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Regarding the issue of the common law duties of care generally imposed under Michigan law in favor of third-parties:

In Downs v Saperstein Assoc. Corp., 265 Mich App 696, 701; 697 NW2d 190 (2005), the Court of Appeals recently acknowledged the general rule that, absent a special relationship whereby a third-party has entrusted himself to the protection and control of the defendant, the defendant owes no duty to take actions to benefit that third party.

Regarding case law from other jurisdictions defining the proper scope of an insurance agent's duty of care to third-parties:

In Greater New York Mutual Ins. Co. v White Knight Restoration, Ltd., 7 AD 3d 292, 293-294; 776 NYS 2d 257, 258 (2004), the New York Supreme Court held:

- 1) a subcontractor's insurance agent did not owe a common law duty to the non-client property owner or general contractor regarding the issuance of certificates of insurance on behalf of the subcontractor; and,
- 2) claims of negligent misrepresentation on behalf of the property owner and general contractor were also untenable because it was *per se* unreasonable for the non-clients to rely upon the certificates of insurance as proof of insurance coverage for the subcontractor, in the face of express disclaimer language to the contrary.

In Benjamin Shapiro Realty Co. v Kemper Nat'l Ins. Cos., 303 AD 2d 245, 245-246; 756 NYS 2d 45, 46 (2003), *lv den*, 100 NY 2d 573; 796 NE2d 473; 764 NYS 2d 382 (7/2/03), the New York Supreme Court held that:

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- 1) a tenant's insurance agent did not owe a duty of care to the non-client landlord regarding the issuance of certificates of insurance on behalf of the tenant; and,
- 2) claims of negligent misrepresentation on behalf of the landlord were also untenable because it was *per se* unreasonable for the non-client to rely upon the certificates of insurance as proof of insurance coverage for the tenant, given express disclaimer language to the contrary.

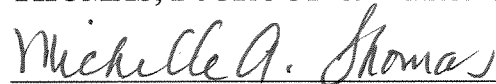
In Napier v Bertram, 954 P2d 1389, 1393-1395; 191 Ariz 238, 242-244 (1998), the Arizona Supreme Court held that, absent a special relationship, an insurance agent does not owe a common law duty of care to non-clients, reasoning that:

- 1) practical considerations mitigate against the imposition of a duty since non-client third-parties are able to protect themselves by directly purchasing their own insurance coverage;
- 2) policy considerations mitigate against the imposition of a potentially unlimited duty of care in favor of vast numbers of even unknown third parties, thus causing a fundamental and problematic change in the law; and,
- 3) the imposition of any such broad duty of care on insurance professionals is better left to legislative action.

Respectfully submitted,

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By:



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Dated: October 27, 2005

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Third Party Defendants-Appellees.

PROOF OF SERVICE

SHEILA BODENBACH certifies that on October 27, 2005, she served a copy of Supplement

Authorities on Behalf of the Defendant-Appellant Farmington Insurance Agency, L.L.C., Submitted

Pursuant to the Court's Order of October 7, 2005, upon the following attorneys:

Mr. James N. McNally
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by placing said documents in an envelope with first class postage fully prepaid thereon.



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